

AO 91 (Rev. 12/93) Criminal Complaint ☒

United States District Court

DISTRICT OF DELAWARE

UNITED STATES OF AMERICA

Criminal Complaint

v.

CASE NUMBER: 08-10M

CHUNG HANG CHENG,
a/k/a JAMES CHENG

(Name and Address of Defendant)

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about January 16, 2008 in New Castle County, in the District of Delaware, defendant did knowingly ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes,

in violation of Title 18 United States Code, Section(s) 2342(a).

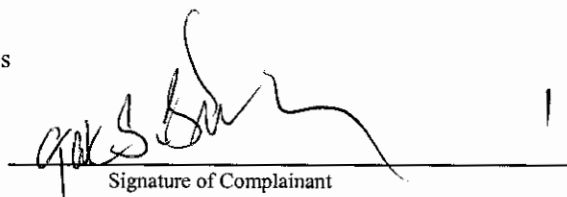
I further state that I am a(n) Special Agent, ATF and that this complaint is based

Official Title

on the following facts:

See attached Affidavit

Continued on the attached sheet and made a part hereof: Yes


Signature of Complainant
Tat S. Shum
Special Agent, ATF

Sworn to before me and subscribed in my presence,

January 17, 2008 at
Date

Wilmington, DE
City and State

Honorable Mary Pat Thyng
United States Magistrate Judge

Name & Title of Judicial Officer

Signature of Judicial Officer



AFFIDAVIT OF SPECIAL AGENT TAT SHUM

1. Your affiant is Special Agent Tat S. Shum. Your affiant has been a law enforcement officer for over eight years with the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). As part of my duties, responsibilities and training, and in the course of my investigative experience, I have become familiar with the statutes, rules and regulations, policies and procedures, relating to the Bureau of Alcohol, Tobacco, Firearms and Explosives, including but not limited to the contraband cigarettes trafficking, and other laws enforced by the Bureau of Alcohol, Tobacco, Firearms and Explosives. I am a graduate of the Federal Law Enforcement Training Center, Glynco, GA, Criminal Investigation Course and the Bureau of Alcohol, Tobacco and Firearms New Professional Training Course. Prior to my employment with ATF, your affiant was employed by the Pennsylvania State Attorney's Office as a State Narcotics Agent. Your affiant was also previously employed by the First Judicial District of Pennsylvania, Common Pleas and Municipal Courts, as a warrant unit investigator for the County of Philadelphia.

2. Unless otherwise stated, the information in this affidavit is based upon your affiant's personal knowledge.

3. The seizure of the below stated contraband cigarettes occurred on January 16, 2008, in the City of Wilmington, State and District of Delaware from a multi-agency buy bust operation.

4. In June 2007, under the joint collaborative law enforcement effort with state agents of the Delaware State Department of Safety and Homeland Security (DSHS) Division of Alcohol & Tobacco Enforcement (ATE) and state special investigator of the Delaware Division of Revenue (DOR) Criminal Investigation Unit in a proactive tobacco diversion investigation, your affiant and state investigators uncovered that a Chinese food take-out restaurant located in Wilmington, Delaware was selling illicit counterfeit contraband cigarettes to city residents. The owner of the restaurant was initially found in violation of Delaware State laws in Title 30 Section 5342 Possession of Untaxed Tobacco Products, Title 11 Section 1120 Selling Tobacco Products not in Manufacturer Packaging, and Federal law & regulations in 27 CFR parts 40 and 275 by selling single and loose cigarettes to customers due to the fact that dealers must sell cigarettes or other tobacco products in the original manufacturer packs/cartons. Investigators also learned that the operators of the restaurant may have also illegally sold single cigarettes to underage/ children in order to capitalize their business profit based on prior surveillance.

5. Further investigation by the multi-agency investigators on the restaurant including the affiant led to the identification of the counterfeit cigarette trafficker/ supplier, Chung Hang CHENG aka JAMES CHENG. CHENG had allegedly distributed and sold approximately a total of sixty (60) assorted cartons of counterfeit Marlboro and Newport brand cigarettes to the restaurant on or about 9/22/06 and in or around March 2007 in violation of 18 USC 2320 Trafficking in counterfeit cigarettes.

6. An NCIC and DELJIS check revealed that CHENG is a repeated tobacco diversion

offender who was previously arrested by the Delaware State Police and the ATE for food stamp trafficking, conspiracy, selling tobacco products to underage minors and other related offenses. An immigration status check assisted by the U.S. Immigration and Customs Enforcement's agent indicated that CHENG is an ethnic Chinese and a naturalized US citizen.

7. Based on the ATF bureau's intelligence information and the personal knowledge of this affiant, the counterfeit cigarettes involved with ethnic Chinese traffickers are commonly imported from China illegally and the transnational contraband cigarette trafficking schemes are commonly controlled by sophisticated Asian Organized Crime (AOC) smuggling groups and their criminal syndicates. It is not known if CHENG is a member of an AOC group, their criminal syndicates and or their associates or business partners. His role in the distribution channels for the illicit counterfeit contraband cigarettes is unknown.

8. With the cooperation of a state cooperating witness (CW), ten (10) additional cartons of Newport counterfeit cigarettes were purchased from CHENG on 9/10/07 and forty-six (46) additional cartons of assorted counterfeit cigarettes were purchased from same on 12/14/07 from a controlled purchase. It should be noted that the transaction on 12/14/07 was video recorded by the affiant. The state cooperating witness reported that he had observed additional cases of suspected counterfeit cigarettes inside of CHENG'S car during their previous two transactions and CHENG had told the CI that he had sold cigarettes to other restaurants on Market Street, Wilmington, Delaware. It is suspected that CHENG has been supplying multiple Chinese restaurants in the Greater Wilmington area with counterfeit cigarettes for retail sale.

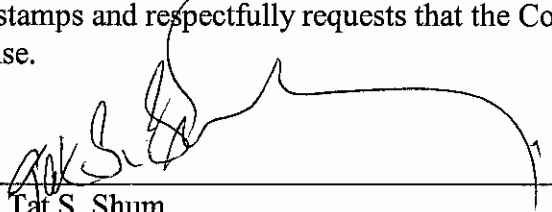
9. Recent telephone contact from the CW to CHENG on January 11, 2008 revealed that CHENG is willing to sell an additional one hundred sixty (160) assorted cartons of (counterfeit) cigarettes to the CW for 25.00 per carton at a total of \$4000.00USC. The telephone conversation was consensually monitored and recorded by ATE state Case Agent Price, assisted by ATF SA Tat Shum.

10. Investigation revealed that CHENG is highly security cautious due to the fact that he has used different cellular telephones to contact the CW and he showed up on different schedules during the last two undercover transactions. CHENG was observed operating a tan 2004, Chevy blazer, Delaware Registration PC802236 which is registered to an abandoned commercial property on 3060 New Castle Avenue, New Castle, Delaware 19720. His current driver's license has the same invalid address listed and the investigators were unable to determine the location of his current home from prior surveillance.

11. With the cooperation of the same CW, a buy bust operation was initially set up on January 17, 2008 at 0900 am. CHENG showed up at CW'S restaurant at 1920 hours on January 16, 2008 unexpectedly. Your affiant was able to provide the CW with pre-recorded \$4000USC for purchase money and subsequently a buy bust was occurred at approximately 2100 hours during the same. One hundred seventy-seven cartons of assorted cigarettes and the ATF pre-recorded \$4000USC evidence purchase fund were recovered from CHENG during the buy bust transaction. Your affiant conducted a hands-on inspection on the evidence and confirmed that one hundred twenty-six cartons of the cigarettes bear no Delaware tax stamps. A field test was

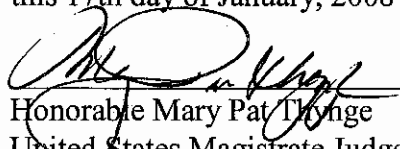
also conducted and it is revealed that the cigarettes are counterfeiters.

Wherefore, based upon your affiant's training and experience, your affiant believes that there is probable cause to believe that the defendant violated 18 U.S.C. 2341 by possessing over 10,001 cigarettes with no tax stamps and respectfully requests that the Court issue a Criminal Complaint charging that offense.



Tat S. Shum
Special Agent, ATF

Sworn to and subscribed in my presence
this 17th day of January, 2008



Honorable Mary Pat Thyng
United States Magistrate Judge
District of Delaware